might be possible to treat the summons as having been amended in like manner to the amendment of a charge, but the substance of the information which is supposed to be in the summons and is analogous to a charge is entirely omitted.

The proper course at this stage was to discharge or release the appellant and issue a fresh summons, or a warrant if grounds for such existed, and adjourn so as to give the appellant time to meet the case against him. An adjournment was at that stage refused and the appellant gave evidence and began to recite his life story but the Court adjourned at the usual hour and the story remains unfinished, for on the resumption a week later, the appellant's Advocate submitted that the summons having been for an order to shew cause why the appellant should not be bound over to keep the peace, an order to execute a bond for good behaviour could not be made thereon.

The submission of the Advocate while a good one under the Indian Code may not always be so under the Federated Malay States Code [see *Driver v. Queen-Empress*(3) and the later amendment to section 117 of the Indian Criminal Procedure Code]. Nevertheless if a person is called upon to shew cause why he should not be bound over to keep the peace and the evidence heard at the enquiry shews no ground for that order but shews that there is ground *prima facie* for an order binding the party called upon to be of good behaviour instead, then the error has possibly been occasioned in the issue of the summons; and if the substance of the information set out in the summons would support an order binding the party called upon to be of good behaviour then, without altering the substance of the information, it is possible to amend the summons. But as already pointed out there never was a sufficient summons in this case. There was nothing that could properly be amended; and in purporting to alter the enquiry to one under section 69 the Magistrate was acting without jurisdiction. If care is taken in issuing a summons a real case for amendment can hardly ever arise.

After a further adjournment the Magistrate ruled against the Advocate's submission, whereupon the Advocate stated he did not propose to proceed with the defence and wished to withdraw the statement made by the appellant.

As the procedure is to be analogous to a summary trial, then, in my opinion, the Magistrate was not bound to accede to the request of the appellant's Advocate. The appellant had been sworn or affirmed as a witness, and the informant had the right to cross-examine him.

These proceedings have been illegally commenced but later there is a new foundation in the summons issued; there is the dangerous irregularity relating to the omission from the summons of the substance of the information; there is illegality in orally calling on the appellant to shew cause under section 69 (*e*) at the conclusion of the hearing of the summons under section 67; there is the unwarranted withdrawal of the appellant; and finally a large amount of the evidence was not admissible in an enquiry held ostensibly under section 67, an error which is not cured by calling the enquiry one under section 69.

I am therefore of opinion that the appeal should be allowed and the order of the Magistrate should be set aside and an order under section 75 should be recorded stating that it is not proved that it is necessary for keeping the peace that the appellant should execute a bond and that the appellant should be discharged.

Appeal allowed and appellant discharged.

JOHORE REPORT.

ONG KAH LOCK vs. HEE YONG FOH.

[Orig. Civil Juris. (Manning, J.) Sept. 27, 1941]

Practice—Accounts and Enquiries—Order for reference to Registrar—Further consideration of action—No provision in Order—Liberty to apply.

In an order directing certain accounts and enquiries to be taken by the Registrar the usual provision for the restoration or further consideration of the action had been accidentally omitted. On application being made for judgment upon the Registrar's Certificate, objection was taken that the Court had no power to repair the omission and therefore no jurisdiction to enter judgment.

Held, that where an Order of the Court is clearly not of a final character it carries with it liberty to apply, although these words do not appear in the Order.

Cases referred to:—

(1) *In re St. Nazaire Company* 12 Ch. D. 88.

(2) *Penrice v. Williams* (1883), 23 Ch. D. 353, applied.

FURTHER CONSIDERATION OF ACTION.

Johannes for plaintiff.

Laycock for defendant.

The circumstances giving rise to the point of practice referred to in the shoulder note above are set out in the following grounds of decision.

Manning, J.—In the above case the following order was made on the 25th September 1940:—

"Upon this action coming on for trial this day in the presence of Mr. M. C. Johannes and Mr. A. L. Barrett of Counsel for the plaintiff and Mr. Sandy G. Pillay of Counsel for the defendant and upon reading the pleadings in this action and by CONSENT IT IS ORDERED that the Registrar of this Honourable Court do take an account of what sum is due by the defendant to the plaintiff in respect of the Agreement to purchase by the defendant from the plaintiff the lands comprised in Government of Johore Grants Nos. 16689 and 16691 and of the Charges of the said lands to the defendant by the plaintiff and that such account be limited to the amounts due in respect of matters connected with the sale and Charges and that on the completion of the taking of such account the Registrar do certify the result of his finding."

The account was taken by the Registrar, and on the 3rd August 1941 he certified to the Court that there was a credit balance in favour of the plaintiff of $2,458.57. On the 13th September 1941 Mr. Laycock, for the defendant, unsuccessfully moved the Court to vary the Registrar's certificate in certain particulars. Then Mr. Johannes, for the plaintiff, having had the case restored to the list, asked for judgment for the plaintiff for the amount found due by the Registrar. Mr. Laycock pointed out that the order set out above was in the nature of a final judgment disposing of the case, that the trial had not been adiourned for further consideration and that nothing whatever had been said about costs.

It may be conceded that the order should have stated that the trial was adjourned for further consideration. There can be no doubt, however, that neither the Court nor either of the parties ever thought that the order was a final one. It was the intention of every one that as soon as the Registrar had certified his finding and the certificate had been approved the suit should be mentioned again so that the appropriate order should be made as a consequence of the findings in the certificate. The note of the learned Judge has the words "adjourned for mention to November list". Mr. Laycock has referred me to *Daniell's* Chancery Practice, 8 Edition, Vol. I, page 1016, where it is stated that if there has been any omission in the judgment at the original hearing, it can be corrected only by appeal. When one turns to the authority on which this statement is founded, viz *In re St. Nazaire Company,*[1] it will be seen that in that case there had been a petition to a judge of the High Court to re-hear a decision of the Appeal Court, and Jessel, M.R., says "I should have thought that the mere statement of that would be sufficient to show that the Judge below had no jurisdiction". This was the real point at issue, but the case is an authority for the principle that a Judge of the High Court has no jurisdiction to re-hear an order, whether made by himself or another judge.

I am not being asked to re-hear any order—all that I am asked to do is to give effect to what must have been the intention of the Court in making the original order. Mr. Johannes has referred me to the case of *Penrice v. Williams*[2] in which Chitty, J, said: "You must consider whether or no the order is one which can or cannot be worked out without any further order. There may be cases where liberty to apply would be granted, although the words had been omitted from a judgment order, when the order is clearly not of a final character, and also when there is necessarily something to be done irrespective of what appears on the face of the order."

In the present case the order was not of a final character, the rights of the parties had not been determined. It is obviously a case in which the plaintiff had liberty to apply. In the case to which I have just referred Chitty, J., also said: "There is also no doubt that if the words 'liberty to apply' were accidentally omitted from an order, the defect could be remedied under the slip order." I see no reason why the omission of the words "adjourned for further consideration" could not be cured in the same manner; it was the intention of the Court and the parties that the suit should be again mentioned, so that a final order could be made. The omission of these words was accidental. I am not, however, going to put the plaintiff to the expense of taking out a summons to have the slip rectified. Tht plaintiff is entitled to apply for judgment now because the original order carried with it liberty to so apply.

Mr. Laycock's objection was of a very technical character and I do not think he had much hope of its being successful but I have dealt with it at som length so that purely judicial reasons might be give for its rejection.

There will be judgment for the plaintiff for the amount as found by the Registrar and costs.

Judgment for plaintiff.